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PD 2009-01

June 26, 2009

MEMO TO: Administrative Heads, Chairs, Deans, Directors and Vice Presidents

FROM: Jon Whitmore
President

SUBJECT: **Presidential Directive 2009-01. Freedom of Speech and Artistic Expression: The Rights and Obligations of Speakers, Performers, Audience Members, Co-Sponsors, Campus Guests, and Protesters at San José State University.¹**

Preamble

Over the past several years, San José State University has repeatedly encountered the tension between the valued principle of freedom of speech and artistic expression and the need for many perspectives to be articulated and heard respectfully by campus members through campus events and speaking engagements. Through these encounters, there emerges the importance of having campus members hear diverse points of view for full educational value and engagement and at the same time, the cherished right of campus members to express their range of opinions on such views within certain parameters.

Given this tension, San José State University formally reaffirms its commitment to freedom of speech and artistic expression through this presidential directive. Freedom of speech in this context will be taken to encompass all forms of communication and artistic expression as well as the freedom to listen, watch, protest, or otherwise participate in such communication. As such, this directive outlines specific guidelines pertaining to freedom of speech and artistic expression at campus events. Such a commitment as formalized in this directive will enable us to create a truly open forum, one in which diverse opinions can be expressed and heard.

This directive applies to ALL members of the University community (students, faculty, staff, and administrators, alumni/alumnae) and to their co-sponsors and invited speakers, artists, and invited guests. By following these guidelines, San José State University seeks to maintain an environment in which the free exchange of opinions and perspectives can thrive and allow for the most optimal learning to take place.

Directive Guidelines:

1. It is the right of members of the University community (including students, faculty, staff, and administrators), speakers, artists, co-sponsors, and others invited by members of the San José State University community to set forth their views and opinions at the San José State University.
2. Within its lawful authority to do so, San José State University will protect the right of any member of the San José State University community, or any invited speaker or artist, to speak or perform, and also will protect the rights of those members of the San José State University community who wish to hear and communicate with an invited speaker or artist.
3. It is the responsibility of San José State University officials or the organizers of an event to make a judgment when there is a clear and present danger that the rights of freedom of expression and communication of a member of the San José State University community, invited speaker, invited artist, or co-sponsor will be infringed upon, and to take appropriate measures, consistent with these Guidelines, to safeguard these rights.
4. It is inconsistent with full respect for freedom of speech and expression-- though itself a form of protected speech-- for members of the San José State University community to exert pressure to revoke an invitation for a speaker to appear at San José State University because of the potential for a violent reaction to the speech, or the threat of disruption of the speech, and such pressure should be resisted. Likewise, refusal to invite an individual to speak solely because his or her presence may invite violence and disruption is contrary to the intellectual ideals of San José State University.
5. Within the confines of a hall or physical facility, or in the vicinity of the place in which a member of the San José State University community, invited speaker, invited artist, or co-sponsor is addressing an assembled audience, protesters must not interfere unduly with communication between a speaker or artist and members of the audience. This prohibition against undue interference does not include suppression of the usual range of human reactions commonly displayed by an audience during heated discussions of controversial topics. Nor does this prohibition include various expressions of protest, including heckling and the display of signs (without sticks or poles), so long as such activities are consistent with the continuation of a speech or performance and the communication of its content to the audience.
6. Protesters have rights, just as do speakers and artists. The standard of "undue interference" must not be invoked lightly, merely to avoid brief interruptions, or as to remove distractions or embarrassment. San José State University has an obligation to provide members of the community, and invited speakers and artists, with personal security and with reasonable

platforms for expression; moreover, it has an obligation to ensure audience access to public events. San José State University does not, however, have the obligation to insure audience passivity. San José State University cannot accept stipulations by invited speakers or artists of terms of appearance that are inconsistent with allowing full freedom of expression to the San José State University community. Protesters and other members of the San José State University community, for their part, have an obligation not to abuse their rights of expression to harass or intimidate speakers in ways that unduly interfere with the expression or communication (see Guideline 5). It is, of course, always within the rights of protesters to express their opposition to a speaker in appropriate ways outside of the hall or physical facility or area where a lecture, meeting, or performance is being held, or to organize alternative forums.

7. Speakers are encouraged to exchange ideas with members of the audience and to engage in dialogue so that points of contention can be addressed directly. It is the responsibility of all parties so that such dialogue not become a means of interfering unduly with free expression and communication, as understood in Guidelines 5 and 6.

8. If any of the parties within the confines of the hall or physical facility interfere unduly with freedom of expression or communication, the organizers or San José State University representative must, if possible, put such parties on notice that they are interfering unduly with such rights. If the notified parties do not stop their undue interference, the organizers or San José State University representative should request assistance from San José State University's Police Department (UPD). UPD will determine whether other measures are necessary to stop it, which may include the physical removal of individuals from the area. Free expression includes making sure that:

Canceling, stopping an event, adjourning to another time or place, or allowing protracted interruption of a speech, meeting, or performance is inconsistent with full respect for the rights of free expression and communication of those present – (prior to it entering a disruptive phase). The overriding goal of the organizers or University representative during a disruption should be to reestablish with deliberate speed an atmosphere conducive to communication between the speaker or artist and the audience, and to full respect for the rights of all parties.

9. Because freedom of speech and expression play such a critical role in the functioning of a university, undue interference with the exercise of these freedoms by members of the San José State University community may constitute grounds for resort to law or other formal action. Any San José State University procedures for formal action must be evenhanded in their application to all parties-- whether organizer, protester, or audience member, or administrator, staff, faculty, or student-- and must provide the appropriate due process to bring a complaint.

10. It is the responsibility of all members of the San José State University community and their co-sponsors and guests to observe and facilitate these Guidelines. Any institutional procedures for enforcement other than resort to law fall within the jurisdiction of San José State University.

11. Officers of the San José State University Police Department will act in accordance with the procedures outlined in this document. When non-University security forces are summoned, it is

understood that they are not under the direct control of San José State University, but they should be made aware of San José State University policies set forth in these Guidelines.

12. San José State University should provide appropriate platforms for free speech and artistic expression. Whenever areas surrounding a public event are cordoned off for security purposes, this must not be done in such a way as to remove the possible location of any protest so far from the center of action that the protest is thereby rendered totally ineffectual. Organizers of the event or University representatives should make clear in advance which areas have been cordoned off, and for what purpose.

13. Whenever possible, lines of communication between those organizing, sponsoring, or managing an event and those considering protesting the event should be arranged and maintained during the event.

This directive is intended to supplement the guidance provided by Presidential Directive 2001-01 (April 12, 2001)

For information on San José State University's Student Code of Conduct, please refer to the following website:

http://sa.sjsu.edu/judicial_affairs/students/student_conduct_code.html

For information on San José State University's Academic Senate's Policy S99-8 Academic Freedom and Professional Responsibility, please refer to the following link:

<http://www.sjsu.edu/senate/s99-8.htm>

¹Sections of this directive derive from the University of Michigan's Policy on Freedom of Speech and Artistic Expression, permission to use granted on April 1, 2009.